



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 5880-99
19 December 2000

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 30 November 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board noted that on 4 May 1982, you were admitted to the National Naval Medical Center from the emergency room, with a diagnosis of post traumatic stress disorder. You had been brought to the emergency room for evaluation after expressing thoughts of killing yourself. In addition, you reportedly had experienced difficulty in dealing with stress at work; sleep disturbances including recurrent nightmares of Vietnam experiences; irritability and loss of interest in normal activities; anxiety and depression; and feelings of depersonalization and derealization. After a period of medical treatment and psychotherapy, there was a complete remission of your symptoms. You were released from the hospital to full duty on 4 June 1982 with a diagnosis of Major Depressive Episode, manifested by a dysphoric mood with anxiety and agitation, loss of interest and pleasure in usual activities, feelings of worthlessness and "meaninglessness", and suicidal ideation. You were promoted to lieutenant colonel with a date of rank of 1 January 1993, and received four very laudatory fitness reports for performance of duty during 11 July 1982-24 February 1984 period. You underwent a pre-retirement physical examination on 12 January 1984. Although you reported an extensive medical history at that time, none of the conditions you disclosed were

considered symptomatic to a degree requiring specialty review or consultation. The examining physician reported normal results of clinical evaluations conducted by him, to include psychiatric evaluation, and the physician found you physically qualified for retirement and to perform all duties of your rank at sea and on foreign shores. You voluntarily retired effective 1 March 1994. As you had not completed three years time in grade as a lieutenant colonel, you were retired in the grade of major, in accordance with 10 U.S. Code 1370. On 5 June 1984, you received the Legion of Merit for exceptionally meritorious conduct in the performance of outstanding services during the July 1980-February 1984 period. You were hospitalized in 1986 or 1987 because of flashbacks and dissociative phenomena related to your post traumatic stress disorder. On 13 July 1998, the Department of Veterans Affairs (VA) awarded you service connection for post traumatic stress disorder, with a 70% rating effective from 2 May 1997.

The Board noted that a service member may not be separated or retired by reason of physical disability unless he has been found unfit to perform the duties of his office, grade, rank or rating by reason of physical disability. Although you suffered from post traumatic stress disorder prior to your retirement, which apparently was a factor in your decision to request transfer to the Retired List in lieu of reassignment to another duty station, the Board was not persuaded that you were unfit for duty at that time. It noted that SECNAV Instruction 1850.4, paragraph 0228, then in effect, provided that when a member performs his normal duties until the time of separation from the service for voluntary or mandatory retirement, "it shall be presumed that he is fit for duty. " That presumption could be overridden only if the member had been improperly retained for a period of time, or where there was an acute, grave illness or injury or deterioration of physical condition occurring immediately prior to or coincidentally with the application for retirement. As indicated above, your performance of duty was exemplary during the year preceding your retirement. The fact that you continued to suffer from post traumatic stress disorder since your release from active duty and have received a substantial VA rating for that condition is not probative of error or injustice in your case. In this regard, the Board noted that the VA grants disability benefits without regard to the issue of fitness for military duty. Additionally, the Board noted that VA ratings may be raised or lowered throughout a veteran's life time as the severity of rated conditions changes, whereas fitness and disability determination made by the military departments are fixed as of the date of separation or permanent retirement, absent evidence of error or injustice and action by the Board.

As you have not demonstrated that you were unfit for duty at the time of your retirement, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director